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MAILED
OCT 14 2011

In re Application of
George Chester Cox
Application No. 10/765,544
Filed: January 27, 2004
Attorney Docket No.

OFFICE OF PETITIONS
ON PETITION

This is in response to the renewed communication, filed September 1, 2011, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

A final Office action was mailed October 30, 2008 to the proper address of record. This action was returned as undelivered on November 12, 2008. A Notice of Abandonment was mailed to the address of record on May 11, 2009 and was returned as undelivered on June 2, 2009. Petitioner indicates the final Office action was remailed and received by applicant "on or about" January 5, 2009. Applicant filed a response to the final rejection on July 8, 2009.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

The final action was mailed to the address of record. Petitioner notes that his response to the non-final Office action, filed October 6, 2008, included a new address under his signature. Petitioner implies this should have been seen by the Office as a request for change in correspondence address. A change in correspondence address must be formally requested as such. The fact that a paper was filed and contained an address different than the correspondence address does not constitute a formal request to change the correspondence address.

Petitioner indicates that the response time to the final rejection should have been reset based on the remailing of the action. Although the Office has no official record of the remailing of the final action, petitioner provides evidence to suggest the action was remailed as per MPEP 707.13. While no official mail date is recorded, petitioner states he received the action "on or

about" January 5, 2009. Resetting the period for response of three (3) months would have required applicant to file a response by April 5, 2009 or July 5, 2009 with a three month extension of time. Petitioner filed his response on July 8, 2009 which was six months after the alleged mailing of the final rejection. Petitioner states an extension of time was filed with the response as evidenced by the "Extension of Time Request" box checked off on the transmittal form. However, merely checking off this box does not constitute a proper request for extension of time as applicant did not provide the fee required for petition for extension of time as set forth in 37 CFR 1.136(a)(3). Therefore, a proper extension of time was not provided and the response was not timely filed.

Petitioner cites MPEP 714.05 in regard to contacting applicant if the response is incomplete. But, to do so there must be sufficient time remaining to correct any response deficiencies. There was no time remaining as the six month period for response to the remailed final rejection had already expired.

Given the above facts, if the final rejection had been remailed on or about January 5, 2009, applicant failed to file a timely response and the application went abandoned on April 6, 2009. While the Notice of Abandonment mailed May 11, 2009 was premature the application is nonetheless abandoned. Therefore, the petition to withdraw the holding of abandonment is **dismissed**.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).
- (2) The petition fee as set forth in 37 CFR 1.17(m), **\$810.00 for a small entity**;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the \$810.00 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors

Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

Any request for reconsideration of this decision should be submitted within **TWO (2) MONTHS** from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." See 37 CFR 1.181(f).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the April M. Wise at (571) 272-1642.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement;